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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/041,685

03/13/98

CULLINAN

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W/C-367552

IM62/0722

BIOSEPTIC SYSTEMS  
P O BOX 2725  
MISSOULA MT 59806

EXAMINER

PRINCE, F

ART UNIT

PAPER NUMBER

1724

DATE MAILED:

07/22/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/041,685**

Applicant(s)  
**Cullinan et al.**

Examiner  
**Fred Prince**

Group Art Unit  
**1724**



☒ Responsive to communication(s) filed on Jun 7, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-9 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 and 2, drawn to a method of separating matter, classified in class 210, subclass 767.
  - II. Claims 3, 5, and 7, drawn to a method of treating by living organism, classified in class 210, subclass 601+.
  - III. Claims 4 and 6, drawn to a method of biochemically transforming matter, classified in class 435, subclass 262+.
  - IV. Claims 8 and 9, drawn to separation membranes, classified in class 210, subclass 500.1+.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation and different effects since Group II requires that

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microorganisms be present on the media in order to treat water, while Group I does not require microorganisms, and Group III does not decompose matter or treat water.

3. Inventions I and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used to practice another and materially different process as treating water with microorganisms or absorbing oil from water.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, the search required for Group II is not required for Group III, and the search required for Group III is not required for Group IV, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37

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CFR 1.143). If the applicants elect Group IV for prosecution, the examiner respectfully submits that from a preliminary review of the application, it appears that claims 8 and 9 are not supported in the specification.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

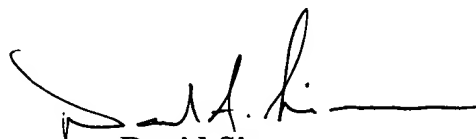
### *Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (703) 306-9169. The examiner can normally be reached on Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Simmons, can be reached on (703) 308-1972. The fax phone number for this Group is (703) 305-7718.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'D. Simmons', with a long horizontal stroke extending to the right.

**David Simmons**  
**Supervisory Patent Examiner**  
**Art Unit 1724**

FP  
Fred Prince  
July 21, 1999